

SENATE BILL 2388

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 14, Part 1, relative to rights of defendants.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-14-101, is amended by designating the existing language as subsection (a) and by designating the following new language as subsection (b):

(b)(1) After a criminal action is commenced, the defendant is entitled to a speedy trial.

(2) Insofar as is practicable, the trial of a criminal action shall be given preference over any civil case; and, the trial of a criminal action where the defendant has been committed to custody pending trial of the criminal action shall be given preference over other criminal actions.

(3) Except as otherwise provided in subdivision (5), upon motion made by a criminal defendant, the trial court shall grant such defendant a trial date within:

(A) Six (6) months of the commencement of a criminal action wherein a defendant is accused of one (1) or more offenses, at least one (1) of which is a felony;

(B) Ninety (90) days of the commencement of a criminal action wherein a defendant is accused of one (1) or more offenses, at least one (1) of which is a misdemeanor punishable by a sentence of imprisonment of more than three (3) months and none of which is a felony; or

(C) Sixty (60) days of the commencement of a criminal action wherein a defendant is accused of one (1) or more offenses, at least one (1) of which is a misdemeanor punishable by a sentence of imprisonment of not more than three (3) months and none of which is a crime punishable by a sentence of imprisonment of more than three (3) months;

(4) Except as provided in subdivision (5), upon motion made by a criminal defendant, where a defendant has been committed to custody in a criminal action, he must be released on bail or on his own recognizance, upon such conditions as may be just and reasonable, if the state is not ready for trial in that criminal action within:

(A) Ninety (90) days from the commencement of the defendant's commitment to custody in a criminal action wherein the defendant is accused of one (1) or more offenses, at least one (1) of which is a felony;

(B) Thirty (30) days from the commencement of the defendant's commitment to custody in a criminal action wherein the defendant is accused of one (1) or more offenses, at least one (1) of which is a misdemeanor punishable by a sentence of imprisonment of more than three (3) months and none of which is a felony; or

(C) Fifteen (15) days from the commencement of the defendant's commitment to custody in a criminal action wherein the defendant is accused of one (1) or more offenses, at least one (1) of which is a misdemeanor punishable by a sentence of imprisonment of not more than three (3) months and none of which is a crime punishable by a sentence of imprisonment of more than three (3) months.

(5)(A) Subdivisions (3) and (4) do not apply to a criminal action wherein the defendant is accused of an offense defined in Tennessee Code Annotated, Sections 39-13-202, 39-13-210, 39-13-211, 39-13-218, 39-13-304, 39-13-305, 39-13-502, 39-13-504 and 39-13-522.

(B) A motion made pursuant to subdivisions (3) or (4), upon expiration of the specified period, may be denied where the state is not ready for trial if the state had been ready for trial prior to the expiration of the specified period and the present unreadiness is due to some exceptional fact or circumstance, including but not limited to, the sudden unavailability of evidence material to the state's case, when the district attorney general has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available in a reasonable period.

(C) A motion made pursuant to subdivision (4) shall not:

(i) Apply to any defendant who is serving a term of imprisonment for another offense;

(ii) Require the release from custody of any defendant who is also being held in custody pending trial of another criminal charge as to which the applicable period has not yet elapsed; or

(iii) Prevent the redetention of, or otherwise apply to, any defendant who, after being released from custody pursuant to this section or otherwise, is charged with another crime or violates the conditions on which he has been released by failing to appear at a judicial proceeding at which his presence is required or otherwise.

(6) In computing the time within which the state must be ready for trial pursuant to subdivisions (3) and (4), the following periods shall be excluded:

(A) A reasonable period of delay resulting from other proceedings concerning the defendant, including but not limited to, proceedings for the determination of competency and the period during which the defendant is incompetent to stand trial, demand to produce, request for a bill of particulars, pre-trial motions, appeals, trial of other charges, and the period during which such matters are under consideration by the court;

(B) The period of delay resulting from a continuance granted by the court at the request of, or with the consent of, the defendant or his counsel. The court shall grant such a continuance only if it is satisfied that postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal charges. A defendant without counsel shall not be deemed to have consented to a continuance unless he has been advised by the court of his rights under these rules and the effect of his consent;

(C)(i) The period of delay resulting from the absence or unavailability of the defendant. A defendant shall be considered absent whenever his location is unknown and he is attempting to avoid apprehension or prosecution, or his location cannot be determined by due diligence. A defendant shall be considered unavailable whenever his

location is known but his presence for trial cannot be obtained by due diligence;

(ii) Where the defendant has either escaped from custody or has failed to appear when required after having previously been released on bail or on his own recognizance, and provided the defendant is not in custody on another matter, the period extending from the day the court issues a bench warrant because of the defendant's failure to appear in court when required, to the day the defendant subsequently appears in the court pursuant to a bench warrant or voluntarily or otherwise;

(D) A reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial pursuant to this subsection has not run and good cause is not shown for granting a severance;

(E) The period of delay resulting from detention of the defendant in another jurisdiction provided the district attorney general is aware of such detention and has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial;

(F) The period during which the defendant is without counsel through no fault of the court, except when the defendant is proceeding as his own attorney with the permission of the court;

(G) Other periods of delay occasioned by exceptional circumstances, including but not limited to, the period of delay resulting from a continuance granted at the request of a district attorney general if:

(i) The continuance is granted because of the unavailability of evidence material to the state's case, when the

district attorney general has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available in a reasonable period; or

(ii) The continuance is granted to allow the district attorney general additional time to prepare the state's case and additional time is justified by the exceptional circumstances of the case; or

(H) The period during which an action has been adjourned by the court in contemplation of dismissal.

(7) For purposes of this subsection:

(A) Where the defendant is to be tried following the withdrawal of a plea of guilty or is to be retried following a mistrial, an order for a new trial or an appeal or collateral attack, the criminal action and the commitment to custody, if any, shall be deemed to have commenced on the date the withdrawal of the plea of guilty or the date the order occasioning a retrial becomes final;

(B) Where a defendant has been served with a misdemeanor citation, the criminal action shall be deemed to have commenced on the date the defendant first appears in a court in response to the citation;

(C) Where a criminal action is commenced by the filing of a felony complaint, and thereafter, in the course of the same criminal action the felony complaint is replaced with an indictment or presentment, the period applicable for the purposes of subdivision (3) shall be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision (6), already elapsed from

the date of the filing of the felony complaint to the date of the filing of the new accusatory instrument exceeds six (6) months, the period applicable to the charges in the felony complaint shall remain applicable and continue as if the new accusatory instrument had not been filed;

(D) Where the criminal action is commenced by the filing of a felony complaint, and thereafter, in the course of the same criminal action either the felony complaint is replaced with an indictment or presentment, the period applicable for the purposes of subdivision (4) shall be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision (6), already elapsed from the date of the filing of the felony complaint to the date of the filing of the new accusatory instrument exceeds ninety (90) days, the period applicable to the charges in the felony complaint shall remain applicable and continue as if the new accusatory instrument had not been filed;

(E) Where a count of an indictment is reduced to charge only a misdemeanor and a new indictment is filed to reflect the same, the period applicable for the purposes of subdivision (3) shall be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision (6), already elapsed from the date of the filing of the indictment to the date of the filing of the new accusatory instrument exceeds six (6) months, the period applicable to

the charges in the original indictment shall remain applicable and continue as if the new accusatory instrument had not been filed; and

(F) Where a count of an indictment is reduced to charge only a misdemeanor and a new indictment is filed to reflect the same, the period applicable for the purposes of subdivision (4) shall be the period applicable to the charges in the new accusatory instrument, calculated from the date of the filing of such new accusatory instrument; provided, however, that when the aggregate of such period and the period of time, excluding the periods provided in subdivision (6), already elapsed from the date of the filing of the indictment to the date of the filing of the new accusatory instrument exceeds ninety (90) days, the period applicable to the charges in the original indictment shall remain applicable and continue as if the new accusatory instrument had not been filed.

SECTION 2. This act shall take effect January 1, 2000, the public welfare requiring it, and shall apply to any offense committed on or after the effective date of this act.